United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

76-1396

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA	:	
	:	
vs.	:	Docket No. 76-1396
SALVATORE VAVOLIZZA	:	
Defendant-Appellant	:	
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BEFORE: Hon. IRVING R. KAUFMAN, Chief Judge

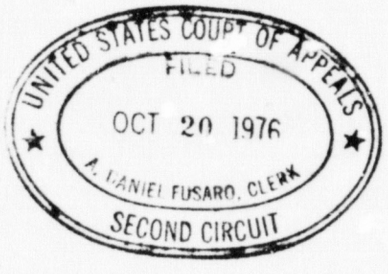
Week of January 10, 1977

BRIEF of APPELLANT

APPEARANCES:

ROBERT FISKE, JR., ESQ.
United States Attorney
For the Government

SALVATORE VAVOLIZZA
Pro Se



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The transcript of the hearing before Judge Tenney contains many assumed facts which have no actual basis. Some statements are in utter disregard of sworn evidence. I find it hard to believe that the learned Judge Tenney could utter such unmerciful thundering; I can only blame it on the counseling that researched the facts for him. I am sure that if the good Judge were acquainted with the truth, he would have shown mercy and indeed would have allowed me a new trial and my day in Court, which so far has been denied.

I will examine each main argument of Judge Tenney and prove it to be without basis in fact.

Page 3 line 9: The Court did not hear any proven evidence, only alleged charges. (See Brief, page 5.)

Page 3 line 16: The Court implies that I knew the law and chose to violate it but does not say how, when, or where. My educational background is limited; I only had three years of high school in Italy, and could not pretend to be an expert on the U.S. Immigration Law. I only had a good working knowledge of the rules of the Immigration Law as it applies to the preparation of visa petitions in favor of relatives (family members) and foreign workers. This is something that any person with average intelligence can learn by reading carefully the in-

structions that accompany the visa petition application. Therefore, I was skilled in preparing such applications very much like a good shoemaker knows how a good shoe should be built, even though he knows practically nothing about the anatomy of the foot and even less about the laws that regulate the shoe industry. Moreover, I never said that I violated the law; I only said that talking to my lawyer, I believe I may have violated the law. These very unconvincing words were put in my mouth by my lawyer, who told me on the morning of the sentencing, minutes before I stepped up to the bench, that he believed Judge Tenney would impose a jail sentence. I wish I could describe the state of my mind in those moments--totally confused and shaken with fear!

Page 5 line 3: The Court states incredulously that I did not hear the offer to make application to withdraw the guilty plea. Indeed, I did not. On page 11 line 16 Judge Tenney said he would have denied the application. To quote him: "We will set that at rest because I do not believe I would have." The Court had in its possession two medical certificates from two ear specialists; one of them under oath, certifying to my hearing difficulty, aggravated in the right ear, which is the ear on the side of the bench. Does the good Judge imply that both of these respected ear specialists, one from Manhattan Eye and Ear, and the other from Montefiore Hospital, were lying,

and one committing perjury? Or is he unaware of these certificates because his counsel or counsels did not bring them to his attention?

Page 6 line 5: How can the Court attribute to me evil motive when all applications were willfully signed by the applicants, most by mail, and when all supporting documentation was furnished by the beneficiaries from abroad. May I point out that my co-defendants and I prepared visa applications for foreign workers for some very reputable firms, like the fashion houses of Bergdorf Goodman, Mainbocher, also Rogers Peet Co., National Biscuit Co., Stella d'Oro Biscuit Co., and other large firms. None of these appeared in the indictment, but only small employers, obviously because they could easily be intimidated. Every one is vulnerable to tax audits. When these employers were visited by the U.S. Immigration inspector, the standard question ran something like this: "Mr. Employer, (applicant), would you have to go out of business if you cannot get the worker you are petitioning for?" The usual reply was "No." We all know that no one is indispensable.

Page 6 line 12: The Court quotes Mr. Kaplan, the Assistant U.S. Attorney, regarding a letter from myself in which I informed the Government that in my opinion the law was really not what it should be, and precisely recommended suggestions of changing it. I would like to bring to your attention that this is the same letter that Assistant U.S. Attorney Gaynor took

out of "context" one paragraph and read it to the Grand Jury. This he did with evil intent because the entire letter of two pages, if read, would have boomeranged against him. My suggestion of changes concerned mainly petitions for foreign workers, and could not possibly reveal me as an expert on the entire U.S. Immigration Law. However, please take note that my criticism of that part of the law of which I had a working knowledge was well justified. In fact, a few years later in 1965, it was changed and the law reduced the preference for foreign workers from 50% of the entire U.S. Immigration quota to only 10%, and moved it from the first Preference to the sixth Preference.

Page 6 line 21: The Court quotes from a tape recording of a conversation I had with the chief inspector of the New York District of Immigration and Naturalization Service, in which similar remarks were made. Again, I can say that my judgment was vindicated: the law was changed. (See page 3 of my Brief.) Moreover, the Court nowhere mentions or criticizes the Government for having repeatedly violated my constitutional rights. On two occasions, inspectors from the New York District of Immigration and Naturalization Service demanded that I hand over a number of clients' files without informing me of my constitutional rights. As a law-abiding immigrant with respect for the authorities, I handed them over. Later on, I found out that my rights had been violated and that I did not have to give them

those files, which for your guidance, contained no damaging evidence. My rights were again violated when the chief inspector of the New York District of Immigration and Naturalization taped our conversation without my knowledge (see transcripts Page 6 line 21). I cannot believe that Judge Tenney willfully ignored all this; I am inclined to believe he was not aware of the facts.

Page 8 line 12: In the three days Judge Tenney heard the evidence, there was nothing damaging to me, only superficial testimony, and if there had been any damaging evidence, it would not have been permitted to be introduced since it would have been prejudicial to the other co-defendants. Therefore, Judge Tenney could not have heard evidence against me. In fact, there was no damaging evidence against anyone, since the other co-defendants who refused to plead guilty were later exonerated.

Page 9 line 3: Mr. Birbano pled guilty, also because he was coerced by Attorney Krieger. He so stated in his Affidavit previously submitted in my motions.

Page 9 line 10: I never said I knew I was committing a crime. There is nothing in the record which shows that I ever submitted or caused to submit a forged or false document, which is the only way one could possibly commit a crime in preparing an

immigration visa application for a foreign worker; I could not be part of a conspiracy to flood the country with illegal aliens unless I committed the crimes listed above, which I did not commit. Judge Tenney is running away with his imagination. During the entire period covered by the indictment, my codefendants and I submitted a total of about 200 visa applications, which had to undergo inspection first by the Labor Department, N.Y. State Employment Service, and then by the U.S. Immigration Service. It should be noted that we charged an average of $200 per application, while lawyers specializing in immigration matters, charged as much as $2000 or $3000 and even more. One dealing with illegal alien visas could name his fee, not $200. Cannot the Court see the absurdity of the Government's claim?

Page 9 line 17: Today our country is flooded with illegal aliens, as repeatedly has been reported and written up in the press. This is due to the fact that a very high percentage of temporary visitors from abroad fail to return to their country of origin, and to the illegal crossing of the Canadian and Mexican borders. The U.S. Immigration Service has been powerless to stem the tide. In fact, some authorities have suggested that the only way it can be done, is through some kind of identification card system, the way it is done in many foreign countries. The Court raises the question of illegal aliens taking jobs from legal immigrants and American citizens. What I did

was to file applications to admit aliens legally. The Judge is confused on the basic issues here. He is talking about aliens who enter the country illegally and stay, not paying taxes, etc. While here the prospective immigrant is applying for legal entry and acting in a responsible manner.

Page 10 line 13: I do not want the fine back. I have repeatedly stated that I would give the fine to charity, but if the Court prefers, I would give it to the U.S. Government.

Page 12 line 3: Judge Tenney is very much in error. I retained Attorney Anolik for the purpose of withdrawing my plea a couple of weeks after sentencing, and about 3 months before the Governments decided not to try my co-defendants. If the good Judge Tenney had observed the chronological events, he would have known differently. Immediately after the plea, the same morning, I protested my innocence to probation officer Tyne. Later Attorney Muschio went to see Judge Tenney to withdraw the plea, but he said he would not allow it. Then you can see why the sentencing continued, but not to my knowledge or understanding. This is further verified on Page 11 line 16; the Court said it would not allow the withdrawal. I believe Judge Tenney acted in a very prejudicial and capricious manner. Why, I don't know, but the record clearly indicates.

Page 13 line 9: I would like to say that one does not go

around boasting of hearing defects, but the Court had two medical certificates from two ear specialists, can it disregard both of them? My hearing defect is more pronounced in my right ear. This is the ear on the side Judge Tenney was sitting. However, if he doubted my statement and the two medical certificates, why did he not order a medical examination by a Court-appointed ear specialist to verify my claim? If it can be done now, I will be glad to pay the fee. If any of you honorable members of the Court know Judge Tenney personally, you will admit that he talks in a very low tone of voice. In fact, the record shows that the attorneys at the trial had difficulty hearing him. You can easily see how one with a hearing difficulty could very well not have heard and clearly understood his remarks.

In conclusion, I again protest my innocence and reaffirm that I never had my day in Court. This is all that I am asking. Please grant it to me. Thank you, gentlemen and members of the Court.